

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

PERSONNEL ADMINISTRATION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

4 A.A.R. 866, April 10, 1998.

2. Sections Affected

R2-5-307

Rulemaking Action

Amend

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-763

Implementing statute: A.R.S. § 41-783.25

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Gordon Carrigan, Human Resources Generalist

Address: 1831 West Jefferson, Room 104  
Phoenix, Arizona 85007

Telephone: (602) 542-4784

Fax: (602) 542-2796

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The original proposed rulemaking repealed the rule that authorizes an agency head to establish an agency on-call policy and to certify the eligible classes, as prescribed by rule, to receive an hourly rate of pay to be available to answer calls or report to work via telephone, beeper, or other notification method in specified situations when the employee is not scheduled to work. The Director of the Department of Administration continues to determine the hourly rate of pay for on-call duty. The rule grants agency heads discretionary authority to establish an on-call policy and implement the policy subject to agency funding availability. Establishment of an on-call policy is not required by federal or state law. The current on-call policy has resulted in inequitable application between agencies and numerous administration difficulties, such as:

(1) Employee claims and supervisor approval of on-call pay for every hour of a pay period that the employee is not regularly scheduled to work;

(2) Agency use of on-call provisions without an approved policy or authorization for the class or position;

(3) Employee claims that the employee is on on-call duty because the employee carries a beeper;

(4) Agency approval of on-call pay for employees assigned to ineligible classes, including employees in nonstate service positions;

(5) The state's lack of a systemwide ability to track the actual times employees are contacted and called in to work while in on-call status; and

(6) Agency use of on-call status to benefit employees financially.

In its current form, an argument can be made that the rule exposes the state to liability. No replacement rule was planned in conjunction with the repeal. This proposed rule will create tracking by requiring an annual report of each agency's on-call practice and will control abuses by clarifying the criteria for on-call duty.

**Notices of Supplemental Proposed Rulemaking**

6. **An explanation of the substantial change which resulted in the supplemental notice:**  
The Personnel Rules Review Committee that is reviewing all Personnel Rules is supporting the preference of various agency directors to retain the rule, but make it more workable. The Committee is proposing to amend, rather than repeal, the rule in the following ways:
  - (1) Require that each agency that assigns an employee to on-call duty develop an on-call policy;
  - (2) Change the designation basis for on-call assignment from job class to position;
  - (3) Differentiate between FLSA Exempt and Non-exempt positions and how their pay is administered; and
  - (4) Require an agency that has employees on on-call duty to conduct an annual audit of the agency's on-call practice and report to the ADOA Director.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of the state:**  
Not applicable.
8. **The preliminary summary of the economic, small business, and consumer impact:**  
The proposed rulemaking will affect only State Service employees who have been on the on-call list at their agencies, and it will not have an impact on small businesses and consumers. The economic impact is difficult to predict, because the individual agency application of the rule will determine the fiscal impact. Agencies that currently use on-call duty are expected to continue to do so, but to what extent can not be projected.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name:	Claudia R. Smith, Communications and Employee Relations Manager
Address:	1831 West Jefferson, Room 128 Phoenix, Arizona 85007
Telephone:	(602) 542-4894
Fax:	(602) 542-2796
10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request oral proceeding on the proposed rule:**  
A public proceeding for oral comments on the rule has been scheduled for Thursday, April 22, 1999, in the Grand Canyon Room in the basement of the Capitol, 1700 West Washington, Phoenix, Arizona 85007. There will be 2 sessions at 3 p.m. and 5:30 p.m. Anyone wishing to provide comments prior to the meetings may submit written comments between 8 a.m. and 5 p.m., Monday through Friday, until 5 p.m., April 19, 1999, at the location in question #4.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **The full text of the changes follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION**

**PERSONNEL ADMINISTRATION**

**ARTICLE 3. CLASSIFICATION AND COMPENSATION**

Section

R2-5-307. On-call Duty

**ARTICLE 3. CLASSIFICATION AND COMPENSATION**

**R2-5-307. On-call Duty**

- A. ~~Authority: General.~~ An agency head may assign an employee to on-call duty ~~when if~~ the agency head considers such action to be in the best interests of the state.
  1. The agency head ~~may request that a classification be approved by the Director as eligible for shall determine a position assigned to~~ on-call duty ~~pay subject to the availability of funds.~~

2. The agency head shall ~~certify~~ determine that the functions or services performed by the ~~positions-position within the~~ class assigned to on-call duty ~~require requires~~ an employee to be available to ~~report to work and answer~~ report to work and answer calls and/or report to work to protect the public health, safety or welfare or in emergency situations via telephone, beeper, or other notification method at a time when the employee is not scheduled to work.
3. ~~Carrying a pager or other notification method does not automatically qualify an employee for on-call duty.~~
4. The agency head shall determine and establish in writing an on-call assignment schedule for each position and shall establish the days and hours of on-call duty for each employee assigned.

Notices of Supplemental Proposed Rulemaking

5. The agency head shall determine the assignment of an employee to on-call duty during or immediately following an approved sick leave.
  6. An employee assigned to on-call duty shall respond to the assignment as directed by the agency head.
- B. Rate of Pay: Non-exempt Employees.**
1. An agency shall pay an employee in a position that is non-exempt under the Fair Labor Standards Act, 29 U.S.C. Section 201, who is assigned to on-call duty.
  2. The Director shall establish the rate of pay for on-call duty shall be determined by the Director.
- C. Exempt employees.** An agency shall not pay an hourly rate to an employee exempt from the FLSA for on-call duty. The agency head may compensate an employee exempt from the FLSA for on-call duty by paying an on-call shift differential in a lump sum.
- CD. Pay Administration for Non-exempt Employees.**
1. Once a class an agency head has been approved selects and schedules a position as eligible for on-call duty pay, the on-call payment period begins when the agency head requires a person is required the employee to be available to report to work or to be available to answer calls and/or report to work. On-call duty pay is terminated terminates in accordance with the standards set forth in paragraph subsections (2)(a) and (2)(b) below and shall resume resumes upon completion of the a work assignment if returning to the agency head re-schedules the employee for on-call status duty.
  2. Upon reporting to work as a result of a call to duty, an An agency shall pay an employee who reports to work while in on-call status shall be paid at the employee's regular rate of pay if the employee has worked fewer than 40 hours during the normal employee's regular work week. If the employee has worked 40 hours during the normal regular work week, the employee agency shall pay the employee receive, as appropriate, cash payment or award compensatory leave in accordance with under R2-5-305 if the employee's position is eligible for such overtime compensation.
    - a. Regular An employee's regular rate of pay will begin at the time resumes when the employee reports to the regular work site and will continue continues through completion of the work assignment.
- E. Pay Administration for Exempt Employees.** An employee shall record all time worked during the workweek. An agency shall pay on-call duty shift differential in a lump sum.
- DE. Agency procedures.** An agency that places employees an employee on-call shall adopt an on-call duty procedure pursuant to this rule under this section. Each agency will submit its proposed on-call duty procedure and any subsequent changes to the Director for approval. The procedure shall include as a minimum the:
1. Methods Method of scheduling employees an employee for an on-call assignments assignment;
  2. Notification On-call notification procedures procedure, including use of pagers or other notification method;
  3. Overtime compensation criteria; and
  4. Requirement that any an agency shall report and pay on-call duty pay shall be reported and paid together with other earnings in the pay period for which it is earned.
- G. Agency Review.** An agency head shall conduct an annual review of on-call practice in the agency and report the results to the Director on or before August 15. An agency head who fails to submit the agency's on-call practice report by the designated date shall discontinue assigning agency employees to on-call duty until the agency head submits the report to the Director.